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# IT'S THE LAW:

## *New Legislation Affecting Montana Landowners and Recreationists*

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# PLEASE RETURN

The 1985 Legislature passed several new laws affecting both recreationists and landowners in Montana. Some of these new laws, specifically those dealing with **trespass on private lands, recreational access to rivers and streams, shooting from roads, and disabled hunters**, represent important changes in past law. To aid landowners and recreationists in understanding these changes, these new laws are discussed briefly on the pages that follow.

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## ASK FIRST!—Courtesy and the Responsible Recreationist

Before discussing the new laws in detail, the Department of Fish, Wildlife and Parks stresses that no amount of legislative action or rulemaking can do more to promote harmony between private land owners and recreationists than the individual actions of the parties concerned. Recreationists need to realize that landowners **do** have the right to fence, post and limit access to their properties as they see fit, within the confines of the law. Recreationists also should realize that their personal actions on private lands may influence landowner attitudes towards recreationists as a whole and determine the availability of those lands for public recreation in the future.

**Please remember:** *If you are a recreationist*, the Department encourages you to seek landowner permission before recreating on private lands. Doing so is **always** good policy.

Also, ***please:***

- (1) Respect the rights and requests of landowners whenever you recreate on private lands.
- (2) Remember that recreating on private property is a **privilege**, not a right, and that entering private lands closed to public recreation without permission is against the law.
- (3) Respect personal property and the land and livestock from which the landowner makes a living. Remember, you may be liable for damages caused by your actions.



- (4) Leave all fences and gates intact and in the position you found them—the landowner left them that way for a reason. If you believe a gate has been left open negligently, notify the landowner before you leave.
- (5) Pack out all litter.
- (6) Always ask permission before shooting on private property. Also, keep hunting safety in mind at all times, and never discharge firearms near livestock or dwellings. If you are legally hunting upland birds, waterfowl or other small game between

the ordinary high-water marks of a river or stream, remember that shooting at these species on or over posted private property requires landowner permission, as does retrieving any downed animals of these species from posted lands.

- (7) Remember that ***hunting big game on private property always requires landowner permission.***



- (8) Remember that you must have permission to cross posted private lands to reach rivers and streams open to public recreation.
- (9) Drive only on established roads.
- (10) Avoid building campfires if at all possible. If you must build one, choose a safe location (use an existing fire ring if one is present), attend to the fire at all times and be sure it is completely out before leaving. A recreational user may be liable for all damages, including the costs of fire control, if a campfire results in a wild fire on public or private land.
- (11) If a dog accompanies you on your outing, keep it under control at all times and prevent it from harassing livestock. *Also, know that your dog is considered to be an extension of your person and that you must obtain landowner permission for your dog to enter or retrieve game from posted private lands.* If a dog really isn't necessary for the activity you plan to pursue, leave it at home.
- (12) Think about the problems noxious weeds can cause landowners and do your part to prevent the spread of these weeds. For suggestions on ways you can help prevent the spread of noxious weeds, contact your county weed supervisor or county extension agent.
- (13) Remember that landowner permission is required before trapping on private lands.
- (14) If you have any doubts about the activities you have permission to pursue on private lands, make it a habit to ask the landowner before pursuing them.

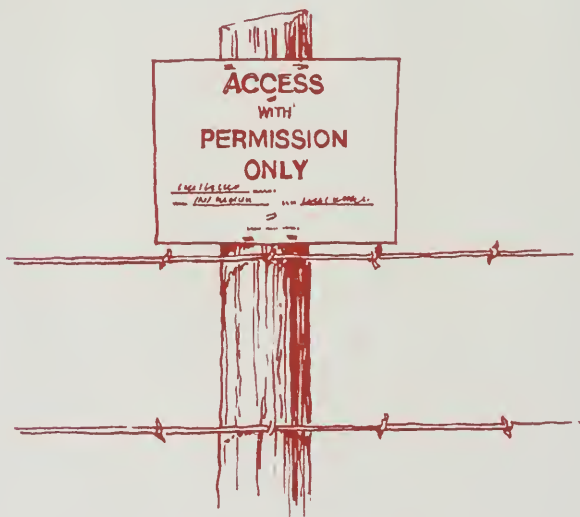
*If you are a landowner, please respect the rights of recreationists to enjoy our public lands and waters, and understand their desire to enjoy the many recreational opportunities private lands present. Remember, most recreationists are honest, responsible citizens who appreciate the opportunities afforded them by landowners.*

## NEW TRESPASS LEGISLATION

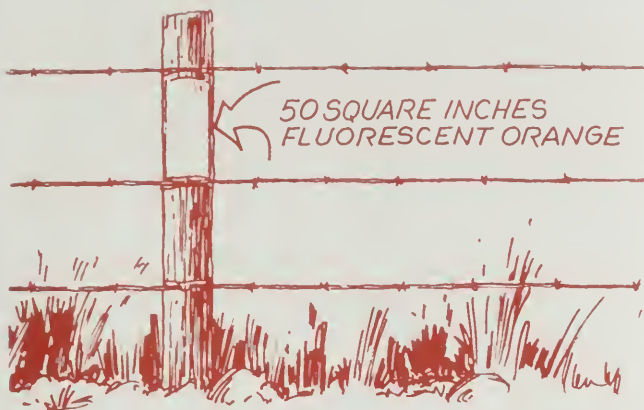
The 1985 Legislature addressed the issue of trespass in passing House Bill 911. The new law took effect on April 22, 1985.

**The trespass law.** This law states that lands can be closed to the public either by posting the land or through verbal communication by landowners or their agents. However, even if lands are not posted, recreationists are urged to seek landowner permission before pursuing any activities on private lands. *If permission is granted, the landowner may revoke the permission by personal communication at any time.* Also, because the posting of a notice closing land may, in some cases, revoke privileges previously extended, recreationists are urged to recontact landowners whenever new posting is observed.

**Posting requirements.** Notice denying entry to private land must consist of written notice on a post, structure or natural object or of notice by painting a post, structure or natural object with at least 50 square inches of fluorescent orange paint. In the case of a metal fencepost, the entire post must be painted. This notice must be placed at each outer gate and all normal points of access to the property, as well as on both sides of a stream where it crosses an outer property boundary line. In cases where land ownership is on just one side of a stream, only that side needs to be posted.



\*This is just one of several signs offered free-of-charge to landowners by the Department of Fish, Wildlife and Parks. For information on the types of signs available or to obtain signs, contact the Department's Conservation Education Division in Helena at 444-2535.



**What does the new law mean?** Because landowners are no longer required to post the entire perimeter of their lands to deny access, it is the responsibility of the recreationist to determine whether private lands are posted. *If lands are posted, it is the recreationist's responsibility to obtain permission from landowners before recreating on these lands.*

The new law does not change the requirement that ***all big game hunters must obtain permission from landowners before hunting on private lands.*** Permission is required even if the lands aren't posted.

**Enforcement of the law.** The law also extends the authority of state game wardens to enforce the criminal mischief, criminal trespass and litter laws to all lands being used by the public for recreational purposes. Recreational purposes are defined in the law to include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking and other pleasure expeditions.

**Penalties.** As stated in Montana law, any person who knowingly enters or remains unlawfully in or upon the premises of another will be guilty of criminal trespass and, if convicted, will be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

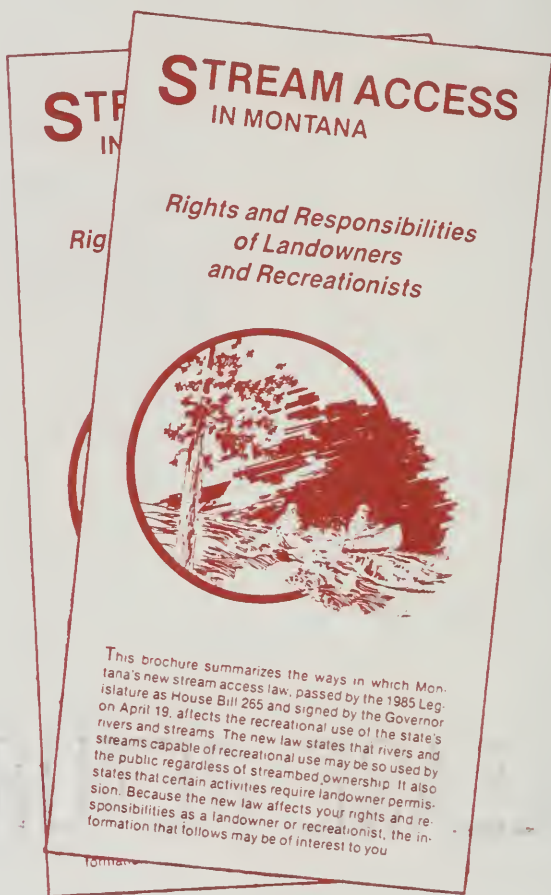
**Assistance for landowners.** Landowners requiring the assistance of law enforcement officers as it relates to this new law should call either their local game warden or county sheriff. The Department also maintains a toll-free number (800-332-6117) for reporting violations.



## THE NEW STREAM ACCESS LAW

House Bill 265 allows certain water-based recreational activities to take place between the ordinary high-water marks of a river or stream and states that some types of activities require landowner permission.

Because of the significant implications of this new law to both landowners and recreationists, the Department of Fish, Wildlife and Parks has produced a separate brochure



that discusses this new law in detail. ***The Department recommends that recreationists review the contents of this brochure before using any Montana waterway for recreational purposes.*** Copies of this free brochure are available at all Department offices and most license dealers. Specific questions concerning the law should be addressed to the Department's Conservation Education Division in Helena (call: 444-2535).

## NEW LAW PROHIBITS SHOOTING FROM ROADSIDE RIGHTS-OF-WAY

Senate Bill 302 expands previous law to prohibit shooting from or across any federal, state or county road right-of-way. Thus, the shoulders, berms and borrow pits of public roads are now addressed by law and, subsequently, are off-limits to shooting and hunting with firearms.

The Department generally interprets "road right-of-way" to include all lands extending from the road surface to bordering fence lines. For those places where there are no fence lines, the Department generally interprets "road right-of-way" to include all lands within 30 feet of the centerline on each side of the roadway. In cases where a fence line exists on only one side of a roadway, the appropriate interpretations for each side would apply. *Questions concerning the actual right-of-way on specific roadways should be addressed to county surveyors or road departments.*

This new law takes effect on October 1, 1985.

## LEGISLATION AFFECTING DISABLED HUNTERS

An exception to Senate Bill 302 was addressed in another new law, House Bill 764, which also takes effect on October 1, 1985.

This law states that certain resident disabled hunters, as certified by the Department of Fish, Wildlife and Parks, can legally shoot from the shoulders, berms and borrow pits of



certain public roads (*state and federal highways are specifically excluded*), or from a vehicle parked on the shoulder of such roads. ***Shooting from a moving motor vehicle or from a road surface is not permitted.*** Also, these disabled hunters

can shoot from parked vehicles only in areas where hunting is permitted and where their actions will not impede traffic or endanger the safety of passing motorists. Like all hunters, disabled hunters *must have landowner permission* to hunt or shoot at big game on private property.

These hunters must be permanently handicapped and be "nonambulatory" or have their physical mobility "substantially impaired." The Department will certify those hunters deemed to meet these criteria. For information on the certification process, contact a Fish, Wildlife and Parks office.

A disabled person who hunts from a vehicle or from the shoulder or berm of a road **must** be accompanied by a companion capable of assisting in dressing any game killed. Vehicles carrying these hunters must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear and sides. The Department will issue orange markers incorporating this symbol to disabled hunters.

**FOR MORE INFORMATION** concerning these or other recreation-related laws, contact the Department of Fish, Wildlife and Parks, Law Enforcement Division, 1420 E. Sixth Ave., Helena, MT 59620 (phone: 444-2452), or one of the Department's regional offices at:

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|--------------------------|----------|
| • Region 1 (Kalispell)   | 755-5505 |
| • Region 2 (Missoula)    | 721-5808 |
| • Region 3 (Bozeman)     | 586-5419 |
| • Region 4 (Great Falls) | 454-3441 |
| • Region 5 (Billings)    | 252-4654 |
| • Region 6 (Glasgow)     | 228-9347 |
| • Region 7 (Miles City)  | 232-4365 |

The Department also maintains a toll-free number (800-332-6117) which may be used to report violations.

Copies of the new laws discussed in this brochure may be obtained by sending a request to the Montana Legislative Council, Room 138, Capitol Building, Helena, MT 59620, or by calling 444-3064.

This publication will be revised January 1, 1986.

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**Montana Department of  
Fish, Wildlife & Parks**